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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**In the Matter of**

MM Docket No. 95-176

## Video Programming Accessibility

Fox Sports Net, LLC, which manages and/or has ownership interests in a number of regional sports networks, submits these Reply Comments in response to the initial comments in this proceeding. Because of the high cost and technical difficulty of captioning multiple regional sports events, their limited distribution, the virtually non-existent residual value of sports programming, and the visual nature of sports as supplemented by the widespread use of on-screen graphics, Fox Sports Net has requested that the Commission exempt regional sports networks from mandatory closed captioning. The national network and league commenters clearly identify and reinforce the undue economic burden and technical problems faced by regional sports programmers in complying with the Commission's proposed closed captioning rules.

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I. In Contrast To National Programming Services, Closed Captioning Multiple Regional Programming Services Causes Undue Economic Burden And Difficult Technical Problems.

Each of the network commenters distinguishes regional sports telecasts from nationally televised sporting events which they already close caption and requests that the Commission exempt such regional programming. Comments of ABC, Inc. ("ABC Comments") at 14-15; Comments of CBS Inc. ("CBS Comments") at 18-22; Comments of National Broadcasting Company, Inc. ("NBC Comments") at 4-6. As Fox Sports Net explained in its initial comments at 4-6, the geographic areas in which each regional sports network is authorized to distribute its primary sports programming are strictly limited by contract. CBS, which has both national and regional distribution outlets, succinctly explains the economic impact of such limited distribution on the economic burden of closed captioning:

The high costs of captioning are to a large extent fixed. Because of the relatively limited sizes of their audiences and subscriber bases, local broadcasters and regional sports networks cannot create the efficiencies that national networks can to absorb these fixed costs.

CBS Comments at 18. The distribution of regional sports networks is further limited to subscription television through multichannel video programming distributors with a maximum potential viewership of less than two-thirds of the television households within a particular region.

Because sports programming has virtually no residual value, regional programmers cannot spread closed captioning costs over multiple showings on different media. Once a game is over and the score reported, viewership of repeated showings would be negligible. See CBS Comments at 19; Comments of the National Association of Broadcasters

("NAB Comments") at 15; Comments of National Association of Collegiate Directors of Athletics ("NACDA Comments") at 9; Comments of Primestar Partners L.P. ("Primestar Comments") at 13.

Viewership ratings for even the more popular professional sporting events are not sufficient to overcome these distribution limitations. Fox Sports Net Comments at 5-7. Of course, the audience shares of less popular professional events, such as professional soccer and rugby, and many collegiate events are smaller. Comments of National Collegiate Athletic Association at 7-8; NACDA Comments at 13-14; Pac-10 Comments at 2; CBS Comments at 18-19. Recognizing the limited audience share of locally produced college and high school sporting events, the Commission has suggested that a categorical exemption may be appropriate for such events (Notice of Proposed Rulemaking at ¶84), which several representatives of the hearing impaired generally have endorsed. Comments of the National Association of the Deaf at 17; Comments of American Athletic Association of the Deaf, Inc. at 3. Fox Sports Net supports the proposed exemption and its underlying reasoning and respectfully submits that the record compels the application of such exemption to all regional sports -- the requisite undue economic burden has been factually demonstrated.

Commenters also confirm that the captioning of multiple regional network feeds would drastically exceed existing real-time captioning capacity which cannot be immediately expanded.<sup>1</sup> NBC Comments at 5; CBS Comments at 20-21. To the extent that regional events

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<sup>1</sup> Estimates of qualified real-time captioners nationwide range from as few as 83 to approximately 500. Notice of Proposed Rulemaking at ¶24. VITAC, the nation's third largest provider of captioning services explains the required training of real-time captioners and resulting delay in expanding such capacity as follows:

are uplinked from a game site, "neither captioning encoding equipment nor skilled captioners may be available." NBC Comments at 4-5; see CBS Comments at 20; NACDA Comments at 7. In contrast to national networks, it is "simply not economically feasible" for regional networks to deliver programming to a distant captioning agency by means of satellite transmission. CBS Comments at 20.

Contrary to the suggestion by the Commission that CBS's carriage of the NCAA Men's Basketball Championships indicates that the captioning of regional sports is neither economically burdensome nor technically difficult (Notice of Proposed Rulemaking at ¶66), CBS explains that "[n]othing could be further from the truth:"

CBS -- utilizing the state of the art technical capabilities of a national broadcast network, and with significant assistance from private and governmental sponsors and captioning agency partners -- has accomplished a feat no network has previously achieved, the captioning of all regional coverage of a complex two-week national tournament. This unique achievement lends no support to the notion that it would not be economically burdensome to caption the programming of regional sports providers, who lack the technical and financial resources of a national network.

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For every 100 people who enter school to learn machine shorthand (the basic skill needed for stenocaptioning), approximately five will achieve the minimum skills necessary for court reporting, and no more than two of those will have the additional skills required to *begin* training for realtime writing. Of 100 students who enter court reporting school in fall, 1997, no more than two will become captioners, and even those two will not be ready to apply their skills until fall of the year 2000 *at the earliest*.

Comments of VITAC ("VITAC Comments") at 7-8 (emphasis in original). Real-time captioning of sporting events also requires knowledge of that particular sport. NACDA Comments at 7.

CBS Comments at 20 n.41. In short, the sole factual basis cited by the Commission to require the captioning of regional sports events is described by CBS as a “unique event” which in no way reflects the economic burden or technical problems faced by regional sports networks in captioning multiple sporting events on a daily basis throughout the year.

II. The Widespread Use Of Graphics Provides A Reasonable Alternative To Mandatory Captioning Of Regional Sports Programming.

Commenters generally agree that sporting events, particularly when supplemented by graphics, are visual and provide most of the significant program content without captioning:

[T]he spoken word is far less important for broadcasts of this kind than for most other kinds of programming. Spectators who actually attend sports events do not ordinarily need announcers and commentators to enable them to understand and enjoy the games they are watching. To the extent that public address announcers at games do provide additional information -- the names of players or the down in football, for example -- even more information is typically provided in the form of graphics.

NBC Comments at 5; see ABC Comments at 15; CBS Comments at 21; NAB Comments at 15; Pac-10 Comments at 3; Primestar Comments at 13.<sup>2</sup> Graphics have become a staple of sports programming. See Fox Sports Net Comments at Exhibit B; CBS Comments at 21 (“the constant

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<sup>2</sup> As Fox Sports noted in its initial comments at 12, because the action in sporting events is uncontrollable, it is difficult to place captioning in a position which will not obscure important action or graphics. The Pac-10 notes that:

In fact, closed captioning can actually detract from the program’s value. It can be confusing, because the text often lags behind, and can obscure portions of, the action. A preferable alternative, which is becoming more and more prevalent, is the use of graphics by the programmer to highlight relevant statistical or analytical information.

Pac-10 Comments at 3.

use of graphics is now standard in the coverage of many sports events”) NACDA Comments at 5.<sup>3</sup> Further, the use of statistical graphics and other visual devices continues to increase. NACDA Comments at 6. Although clearly not a perfect substitute for closed captioning, graphics provide most of the important information that may otherwise be unavailable to the hearing impaired viewer.

### Conclusion

The initial comments confirm that the unique characteristics of regional sports networks and the sports programming they distribute make mandatory captioning economically burdensome and technically infeasible. Captioning expertise is limited and costs are higher so that the inherent distribution limitations and absence of residual value unduly increase the economic burden of captioning. Fox Sports Net respectfully requests that the Commission

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<sup>3</sup> According to the NACDA “[a]s many as 65-70% of the shots in a college basketball game have a graphic element added to them.” NACDA Comments at 5. Such graphics may include: Introduction of the starting lineups; coaches and officials; conference or league records and standings; institutional and conference promotions; score after every basket; score at every time out; clock after every basket; shot-clock as it gets below 10 seconds; clock (with time in tenths of a second) in the last minute of each half; individual scoring totals when a player is at the foul line; individual foul shooting totals when a player is at the foul line; personal fouls and team fouls; half-time statistics; final statistics; game summaries. Id. at 5-6.

recognize the alternative use of graphics and grant such regional networks a categorical exemption from its captioning requirements.

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Respectfully submitted,

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